

REMARKS

Interview Summary. Applicant's attorney, Gordon D. Coplein (Reg. No. 19,165) makes of record a telephone interview with the Examiner on May 30, 2009. Also participating in the interview were the Examiner's supervisor, Mr. Gehman and the Canadian agents, Alain Provost and Dominique Nolet, who were responsible for writing the application.

During the interview, the invention (Figs. 10-15) was discussed as well as the prior art. The prior art was discussed and applicant's Canadian agents commented that these all required axial motion of a part relative to a capsule to be broken, whereas the invention used lateral movement of the wall of a can.

A proposed amendment to pending claim 10 had been presented to the Examiner before the interview. These amendments also were discussed, and the Examiner gave suggestions to more fully recite the structure of the elements of the can, to include the can as part of the claim combination, and to better describe the interaction of the elements.

The remaining original claims are cancelled by this amendment and a new main claim 22 is submitted that follows the Examiner's suggestions. As defined in new independent claim 22, the container (can) allows the release of a first substance in a tank to be ruptured into a second one in the can. The can contains at least one perforable tank adjacent to the can flexible wall. A support within the can supports the at least one tank within the container. A tooth is moved into engagement with and causes the perforation of the tank when a lateral pressure is exerted on an outside area of the can flexible wall. The feature of the "lateral" pressure or force is supported in the description by the arrow as illustrated in Fig. 12, and also by the description, as stated on page 3, ¶ [0044] of the published application:

The release device inside the primary container becomes accessible from outside by a pressure of the hand to the indicated place.

The invention as set forth in new claim 22 clearly defines over the cited art as explained below.

Klingaman, U.S. 4,088,246. Referring to Figs. 10-15, a second embodiment of a container is shown. Referring to Fig. 10, the frangible bottom wall (52) of the capsule (46) is pierced when the closure cap (37) is rotated and displaced downwardly towards the puncturing means (45). The main difference relative to the embodiment shown in Figs. 1-9 of Klingaman resides in the elongated shape of the top closure (37), which can accommodate a larger capsule (46).

Haber, U.S. 5,330,048. Referring to Fig.3, a vial is shown. It is formed by two housings (56, 58), a lower housing (58) and an upper housing (56) which are threadably coupled. In the lower housing there is nested a supplemental container (4). A mixing container (8) is connected to the upper housing (56). A breachable seal (24, 44) closes the upper part of the supplemental container (4) and the lower part of the mixing container (8). When the upper housing (56) is screwed or rotated downwardly towards the lower housing (58), a pressure is created in the supplemental container (4) forcing the substance it contains against the valve (24). As shown in Fig. 3A, since the piston (24) is made of deformable material and since it is provided with through holes (34), the pharmaceutical substance within the supplemental container (4) is evacuated towards the mixing container (8). The upper housing (56) must be screwed downwardly towards the lower housing (58) to breach the seal.

Jamieson (US 5,620,725) Referring to Fig. 3, a can (1) is shown containing a beverage (7), typically beer. The can is provided with a hollow insert (5) which is located towards the top of the can, although it could be placed towards the bottom of the can (1). The hollow insert (6) is filled with a gas, carbon dioxide or nitrogen or a mixture of both, compressed at a super atmospheric pressure. The hollow insert is closed by a closure means (6). The beverage within the can is also kept at super atmospheric pressure. When the can lid (2) is opened, the pressure of the can is reduced to the atmospheric pressure, which allows the gas within the hollow insert to breach the closure means (6) and be vented into the beverage (7) of the can (1). The opening of the can necessarily leads to the expulsion of the gas from the insert, and the pressure variation is obtained

by tearing off the tear-off ring of the lid (2). The expulsion of the gas from the hollow insert is initiated upon the opening the beer can, that is, when acting on the tear-off ring of the lid (2).

None of the prior art, taken alone or in combination, teaches the novel structure of main claim 22 where lateral pressure on the can wall moves a tooth into engagement with a tank within the can to perforate it to release its contents. Considering this aspect of the prior art, in Klingaman, while the wall of the container (11, 35 or 70) may be flexible or squeezable, the flexibility of the container's wall is to allow the liquid of the container to be expelled under a pressure exerted on the wall. When a lateral pressure is exerted on the container's wall, it is only to expel the liquid within the container. In other words, a pressure exerted laterally, that is, on the walls no. 11, no. 35 or no. 70, would never pierce the capsule.

In Haber, the lower and upper housings and the supplemental and mixing containers are not described as flexible.

In Jamieson, it is the opening of the beer can that creates a variation of the pressure inside the can, that causes the closure means to be breached and the gas inside the hollow insert to be vented. The pressure is not applied laterally, via the flexible walls of the can, as in the invention.

As a further point in distinguishing over the prior art, in main claim 22, the tank to be perforated is adjacent to the flexible wall of the can. This feature is supported by Figs. 10 and 12 of the description. In the prior art of Klingaman, the description or the embodiment shown does not teach or suggest that the capsule is adjacent to the flexible wall of the container. In fact, the capsule is either nested within the top closure or adjacent to the neck of the containers. In Haber, the supplemental or the mixing containers are not adjacent to a flexible wall. Also, in Jamieson, the hollow insert is not shown or described as adjacent to the wall of the beer can. From the Figs, it is generally placed in the middle of the beer can.

Accordingly, new claim 22 describes a novel and advantageous device that is neither shown or suggested by the prior art. therefore, this claim is patentable and should be allowed.

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The other new claims depend directly or ultimately from claim 22 and recite further novel features of the invention. Therefore, these claims also are patentable and should be allowed.

Prompt and favorable action is requested.

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